

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:

**COLLIER LAND & COAL
DEVELOPMENT, LP,**

Debtor.

**COLLIER LAND & COAL
DEVELOPMENT, LP,**

Movant,

vs.

**PARKVALE BANK,
HIGHWAY EQUIPMENT COMPANY,**

Respondents.

Bankruptcy No. 10-22059-JKF

Chapter 11

Document No.

Related to Doc. Nos. 177

**Hearing Date and Time:
March 15, 2011 at 10:00 a.m.**

**EMERGENCY MOTION FOR SALE OF PERSONALTY
FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES**

AND NOW comes Collier Land & Coal Development, LP, by and through its Counsel, Robert O Lampl, John P. Lacher and Elsie R. Lampl and files the following **EMERGENCY MOTION FOR SALE OF PERSONALTY FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES**, as follows:

1. The Movant is Collier Land & Coal Development, LP, the Debtor in the above Chapter 11 Case.
2. Collier Land & Coal Development, LP commenced its Chapter 11 Case on March 25, 2010.
3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. Section 1334, 28 U.S.C. Section 157 and 11 U.S.C. Section 363.

4. Collier Land & Coal Development, LP is the owner of Personalty which is located on the premises and within the Real Property located at 1633 Route 51, South, Jefferson Hills, PA 15025, which consists of various items of heavy equipment which were intended to be utilized for land excavation and coal mining by the strip mining method. A complete listing of the equipment by manufacturer, year, model, description hours and serial number is attached hereto as **EXHIBIT A**.

5. On March 4, 2011, representatives of the Respondents, Parkvale Bank and Highway Equipment Company appeared before this Honorable Court at which time the terms of an agreement for the sale of the equipment was announced in open court. The terms were a payment to the Estate in the amount of Six-Hundred Eighty Thousand Dollars (\$680,000.00) from Highway Equipment Company "the purchaser" and a forgiveness of claims ("Mutual Releases") by and between this Estate and Highway Equipment Company. It is further provided that the proceeds of sale will be paid to Parkvale Savings Bank as a partial payment of its outstanding claims in this Estate. Highway Equipment Company's claim is approximately \$400,000.00 but is subject to an unfiled counter-claim which the Movant believes to be substantial. Additionally, the Parties are involved in a pending Adversary Proceeding at Adversary No. 10-02535-JKF. The gravamen of the Adversary Proceeding is a dispute over the validity and enforceability of competing security interests asserted by Parkvale Savings Bank and Highway Equipment Company in the subject equipment. The sale, if approved, would result in a dismissal with prejudice of that Adversary Proceeding.

6. The terms of the sale were conditioned upon an inspection of the equipment by representatives of Highway Equipment Company and a clear delineation

of the items to be sold. It was anticipated that Highway Equipment Company would produce a written confirmation within short order, but has not yet done so.

7. The Respondents which may hold liens, claims and encumbrances against the equipment subject to this sale are as follows:

- a.) Highway Equipment Company; and
- b.) Parkvale Savings Bank

The respective documentation supporting said claims are more fully set forth and described in the pleadings of record in Adversary Proceeding No. 10-02535-JKF. Additionally, a Replevin Action is pending in the Court of Common Pleas of Allegheny County, Pennsylvania at GD-11-00375 Parkvale Bank vs. Collier Land & Coal Development, LP, a Pennsylvania limited partnership. The Movant has received an additional offer for the equipment from Murrysville Machinery Company for a purchase price in the amount of Six-Hundred Eighty-Five Thousand Dollars (\$685,000.00). This proposal, however, does not include a concomitant resolution of the competing lien priorities, nor does it include a resolution of the Highway Equipment Company claim against this Estate and the Estate's counter-claim thereto. While the Movant prefers and recommends approval of this proposed sale to the Highway Equipment Company in accordance with the terms set forth above in Paragraph 5, in the absence of written confirmation thereof, the Movant proposes approval of a sale to Murrysville Machinery Company in the amount of \$685,000.00. A copy of the proposed sale terms are attached hereto as **EXHIBIT B**.

8. Given the exigencies of the circumstances, the prior relief from stay granted to Parkvale Savings Bank and the active interest and scrutiny given to this sale, the Movant believes that notice and publication be waived.

9. The Movant believes that the proposed sale is fair and reasonable and acceptance and approval of the same is in the best interest of this Estate.

10. The Movant submits that the purchase price associated with the above-described sale transaction is fair and reasonable and the Buyer is a “good faith” purchaser.

WHEREFORE, the Movant respectfully requests that this Honorable Court enter an Order approving a sale of the Debtor’s Personalty.

Respectfully Submitted,

/s/ Robert O Lampl
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PA I.D. #62297
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CERTIFICATE OF SERVICE

I, Robert O Lampl, John P. Lacher and Elsie R. Lampl, hereby certify, that on the 10th day of March, 2011, a true and correct copy of the foregoing **EMERGENCY MOTION FOR SALE OF PERSONALTY FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES** was served upon the following (*via electronic service and/or First Class U.S. Mail*):

Joseph M. Fornari, Jr.
Office of the U.S. Trustee
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1001 Liberty Avenue
Pittsburgh, PA 15222

Christopher L. Borsani
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/s/ Robert O Lampl
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